June 28, 2023

The Honorable Julie A. Su
Acting Secretary, U.S. Department of Labor
Office of the Secretary
200 Constitution Avenue, NW
Washington, D.C. 20210

cc:
The White House Domestic Policy Council
United States Citizenship and Immigration Services

Dear Acting Secretary Su,

On behalf of the undersigned organizations, business groups, and individuals, representing a broad political spectrum of constituents and stakeholders, we strongly encourage the Department of Labor (DOL) to annually update its Schedule A Group I occupation list to better reflect the conditions facing the current labor markets.

Since 1965, the Department has overseen the labor certification process that ensures employment-based immigration does not adversely affect the wages and working conditions of U.S. workers. Employers sponsoring immigrants for employment-based green cards must usually demonstrate their need for foreign talent through the Permanent Labor Certification Process, a lengthy procedure that costs thousands of dollars. But when an occupation faces shortage conditions, some steps in the certification process become redundant and unnecessary. DOL created the Schedule A list to exempt workers in shortage occupations from these burdensome and time-consuming steps. Schedule A saves months of processing time that keep much-needed workers from the U.S. workforce.[1] All petitions — including those for Schedule A occupations — are still thoroughly evaluated and must obtain a prevailing wage determination to protect workers.

DOL has not updated Schedule A Group I at all since 1991. The list remains frozen in time, completely unconnected to the needs of today's labor market.[2] There are an immense number of jobs that exist today, which did not exist in the early 1990s. Compounded by the impacts of the COVID-19 pandemic, the current labor market is historically tight; the job openings to unemployed ratio is higher than ever previously recorded by the Bureau of Labor Statistics.[3] Labor shortages continue to contribute to inflation,[4] hinder business growth,[5] and hurt U.S. consumers.[6] Any updates should be the result of an objective process that evaluates current economic conditions to ensure that hiring a foreign worker will not adversely affect U.S. workers similarly employed.

1 PERM Processing Times, U.S. Department of Labor, (April 2023), https://bit.ly/43jQxII. PERM processing takes on average almost 300 days to complete. Prevailing wage determinations (which are required before filing a PERM application with DOL, or with USCIS for a shortage occupation), are taking on average over 200 days to process. Prevailing Wage Determination Processing Times, PERM, U.S. Department of Labor, (April 2023), https://bit.ly/43jQxII.

2 Cecilia Esterline, "The Case for Updating Schedule A", Niskanen Center, (October 17, 2022), https://bit.ly/3UveBVa.

3 Paige Ouimet, "Labor Supply: Inside the Tight Labor Market", Kenan Institute of Private Enterprise, (February 28, 2023), https://unc.live/3Kot2ph.

4 Jerome H. Powell, "Inflation and the Labor Market", Federal Reserve, (November 30, 2022), https://bit.ly/3Gvy8ig.

5 "Small Business Economy is Still Troubled by Inflation & Labor Shortages", National Federation of Independent Business, (March 15, 2023), https://bit.ly/3A4nw6F.

6 Cecilia Esterline, "Labor shortages are damaging Americans' quality of life. Immigrants can help.", Niskanen Center, (October 13, 2022), https://bit.ly/3zMbIWw.

Updating Schedule A Group I requires regulatory action, not congressional approval,[7] and does not impact the number of available green cards. Rather, it provides some much-needed predictability and flexibility to the employment-based immigration system, allowing the U.S. to better compete on a global scale. Often, delays in our immigration system put the U.S. at a distinct disadvantage by pushing workers to relocate to fill jobs in other countries with fewer immigration barriers.[8]

The consistent evaluation and annual update of Schedule A furthers DOL's mission to protect U.S. workers and their livelihoods. Regular updates to Schedule A Group I would enable DOL to assess which occupations are in shortage based on labor market conditions. With a current Group I list, DOL can better understand and address critical workforce gaps, as well as better match skilled workers with the opportunities that await them in the United States. Using employment-based visas to address labor shortages will also expand complementary job opportunities for U.S. workers in parts of the economy negatively affected by such shortages.

We urge the Department to utilize its legal authority to pursue a data-driven approach to updating Schedule A Group I to reflect the labor needs of today's economy. We would also like to offer any assistance in research or resources to help DOL determine the best process for updating Schedule A. Thank you for your dedication to advancing labor policies that protect U.S. workers and address crucial workforce needs.

Sincerely,

Organizations

American Business Immigration Coalition
American Immigration Council
American Immigration Lawyers Association
CGFNS International
Compete America
Cornell Immigration Law and Policy Research Program
Council on National Security and Immigration
Economic Innovation Group
Federation of American Scientists
FWD.us
Global Detroit
IEEE-USA
Institute for Progress
International Medical Graduates Taskforce
Labor Mobility Partnerships (LaMP)
National Immigration Forum
Niskanen Center
Presidents' Alliance on Higher Education and Immigration
Siskind Susser, PC
Talent Beyond Boundaries (TBB)
United States Hispanic Chamber of Commerce
World Education Services

Policy Experts

Theresa Cardinal Brown, Senior Advisor, Bipartisan Policy Center
Helen Dempster, Center for Global Development
Daniel Di Martino, Manhattan Institute
Isabella Hindley, AAF
Douglas Holtz-Eakin, AAF and former director of the Congressional Budget Office
Randel Johnson, Distinguished Immigration Scholar, Cornell University
Amy Nice, Distinguished Immigration Fellow and Visiting Scholar, Cornell University
Cristobal Ramón, Independent Expert
Josh T. Smith, Center for Growth and Opportunity at Utah State University
Stan Veuger, Senior Fellow, American Enterprise Institute
Tahmina Watson, Watson Immigration Law

7 "Part 60 - Immigration; Availability of, and Adverse Effect Upon, American Workers," Federal Register, (December 3, 1965), https://bit.ly/3MuZA3u.

8 "Labor Secretary Walsh: Immigration policy puts U.S. 'at a disadvantage'", Yahoo! Finance, (January 17, 2023), https://yhoo.it/3MvXYXj.